S.B. Civil Writ Petition No.2784/06
Dr. Neera Srivastava & Anr.
Vs.
University of Rajasthan & Ors.

Date of Order : 15/05/2006

Hon'ble Mr. Justice Ajay Rastogi

Mrs. Naina Saraf, for petitioners

By the instant petition, the petitioners have challenged the entire proceedings held in Career Advancement Scheme, 2001 making promotion to the post of Professor in the University of Rajasthan and have also simultaneously prayed that petitioners be also promoted as Professor w.e.f. 2001 when earlier promotions were made.

Petitioners are presently working as Associate Professor in the Department of Zoology and both have participated in the process initiated by the University of Rajasthan holding selection for the post of Professor under CA Scheme, 2001 and after their due participation, both were found unsuccessful. This fact is not disputed by the counsel that those who participated in the process of selection along with petitioners and finally selected, have joined and working in the Department of Zoology as Professor since 2001 and they are not impleaded as respondent against which relief has been sought in the present writ petition. Counsel has further

informed this court that those who were found unsuccessful filed their writ petition and in view of order of this court, the University took decision calling upon such applicants who were found unsuccessful in CA Scheme, 2001 to submit their application afresh and the present petitioners have also submitted their application in pursuance thereof for participation in the process which the University of Rajasthan has now initiated under CA Scheme, 2001.

Mrs. Naina Saraf, counsel for petitioners submits that very action of the University in initiating process under CA Scheme, 2001 in the absence of any amendment under the Act, 1974 is wholly without jurisdiction and the selections made in pursuance thereof under CA Scheme, 2001 be also set aside and simultaneously submits that petitioners may also be permitted to participate in the process of selection.

In my opinion, in the absence of those who participated along with petitioners and found successful in CA Scheme, 2001 have joined their promotional post in the Department of Zoology in their absence no relief could be claimed by the petitioners. Counsel has placed reliance on the judgment of apex court in **U.O.I. Vs. O. Chakradhar [(2002) 3 SCC 146]** and submits that in view of judgment [supra] even those who were selected and have joined if there is a gross irregularity committed

in the process adopted even in their absence the same can be set aside without offering notice to individual applicant who finally found suitable.

The judgment [supra] on which counsel has placed reliance is of no assistance for the reason that it was a case where the selections were made without holding typing test which was essential requirement and condition of eligibility for appointment to the post of Junior Clerk-cum-Typist and on the recommendations made by CBI, it revealed that there was a mass irregularity committed in the process initiated by the Board and it was difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection. But in the instant case, the persons who are finally found suitable and selected under the CA Scheme, 2001 in the Department of Zoology, are very much known and identified and certainly after they joined service working almost for more than 5 years right has been accrued in their favour. The petitioners cannot now be permitted to question after such an inordinate delay for which no satisfactory explanation has come forward and that too behind their back questioning their selection in 2006, it is further difficult to resolve that the petitioners simultaneously praying for seeking permission with regard to their own participation in the process under the same terms and conditions as referred to in the CA Scheme, 2001.

In my opinion, petitioners cannot be permitted to approbate and reprobate in the same breath. Apart from it, after it has been brought to my notice that petitioners are now being permitted to participate in the process which has been initiated by the University under CA Scheme, 2001 now I do not find any illegality to interfere in the matter.

Consequently, the writ petition stands dismissed.

[Ajay Rastogi],J.

FRB